

CIVIL SERVICE COMMISSION MINUTES

August 16, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Gordon Austin
Roy Dixon
Barry I. Newman

Comprising a quorum of the Commission

Absent was:

Sigrid Pate

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
August 16, 2000

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>4, 8</u>	<u>12, 13</u>		<u>6</u>

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Newman. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **George Blanter**, former Psychiatric Nurse II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of July 19, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Pate: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Suspension and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Dixon: Willas DeMorst, S.E.I.U. local 535, on behalf of **Charlene Demus** appealing an Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

4. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **John Kelleher**, Deputy Sheriff, appealing Citizen Law Enforcement Review Board findings.

Confirmed.

5. Todd Tappe, Esq., on behalf of **Maurice Jackson**, Senior Probation Officer, requesting a hearing to appeal an alleged disciplinary transfer within the Department of Probation.

RECOMMENDATION: Deny Request.

Todd Tappe, Esq., on behalf of Appellant addressed the Commission emphasizing that the transfer of Appellant had disciplinary reasoning behind it. He asked for a Rule VII hearing, or in the alternative, a Rule XI investigation to clarify the parameters of Rule VII.

Rosario Rull, personnel officer for the Department explained that the transfer of Appellant was an administrative transfer, not disciplinary in nature. The transfer was initiated to defuse a hostile work environment. She explained that a Record of Discussion was placed in Appellant's work-site file, which is used for both positive and negative evaluation of employee performance throughout the year. The Commission queried the Department regarding the Record of Discussion, ascertaining that the Record can be purged after one year, only if both parties (supervisor and employee) agree to the purge. The Department explained that the work-site file follows the employee from location to location. The Commission opted to grant Appellant a Rule VII hearing.

**Motion by Austin to set a hearing; seconded by Dixon. Carried.
Commissioner Pate assigned.**

WITHDRAWALS

6. Commissioner Brummitt: **Joque Jones**, former Intermediate Account Clerk, appealing an Order of Immediate Suspension and Charges and an Order of Removal and Charges from the Health and Human Services Agency.

Withdrawn.

DISCIPLINES

7. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **George Blatern**, former Psychiatric Nurse II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Insubordination (failure to follow both written and oral direct orders); Cause II - Conduct unbecoming an employee of the County; Cause III - Acts incompatible with or inimical to the public service; and Cause IV - Failure of good behavior. Employee was employed as a Psychiatric Nurse II in the Oceanside office of the Agency. He was ordered to report for temporary assignment to the Central office, which he refused to do. Subsequently, Employee was ordered to report for permanent reassignment to the North Inland Office, which he again refused. He had provided the Agency with seven reasons why he refused the temporary assignment, as well as the permanent one. Employee's reasons for refusing the reassignments to the Central Office and to the North Inland Office indicated his personal preference for his current assignment rather than any unreasonable or extraordinary burden created by the reassignments. At a Skelly conference for a suspension that had previously been ordered, the appointing authority reiterated to Employee the necessity for the reassignment and advised that failure to comply with this directive would constitute further disciplinary action. The appointing authority gave Employee an incentive to comply with the directive by offering to reduce his suspension. Employee again refused to comply.

The Notice of Intention to Remove stated that an appointment for Employee to reply to the charges had been scheduled on the same day that Employee was first served with the Notice and Proposed Order. He argued at the Commission hearing that the Agency failed to provide sufficient and timely notice of the Skelly conference. Employee chose to attack the Agency's procedure rather than the causes for his removal. The hearing officer deemed Employee's earlier written responses to the Agency's directives as unconvincing. They simply indicated his preference for his current assignment rather than any meritorious legal or factual basis for his objection to the assignment. As a matter of law, the Agency failed to provide Employee with adequate notice of the Skelly conference. The proper remedy for the agency's failure to provide Employee with an adequate Skelly conference was an award of back pay from the date of his removal to the date of the CSC hearing. The Agency did prove all the charges set forth in Causes I through IV.

It is therefore recommended that the Order of Removal be affirmed; that Employee be awarded back pay, benefits and interest from the date of his removal to the date of the hearing, minus any wages he received from outside employment during that time; that this decision shall become effective upon the date of approval by the Civil Service Commission, and the Commission approve and file this report.

**Motion by Austin to approve Findings and Recommendations;
seconded by Dixon. Carried.**

COMPULSORY LEAVE

8. Commissioner Austin: Bradley Fields, Esq., on behalf of **Harold Mower**, Deputy Sheriff, appealing his placement on Compulsory Leave by the Sheriff's Department.

Prior to the Findings & Recommendations being rendered, Bradley Fields, Esq. addressed the Commission on behalf of Mr. Mower. He summarized Appellant's stance regarding his removal and requested that Appellant be reassigned to different duties within the Department. Mr. Fields also stated that Mr. Mower did not receive a pre-determination hearing as required by case law.

FINDINGS & RECOMMENDATIONS:

Employee had been a deputy in the Sheriff's Department since 1993. He was assigned to the George Bailey Detention Facility until January 1997, when he was reassigned to the Santee Station to perform patrol duties. During his employment with the Department, Employee's Performance Appraisal Reports were standard to above standard. However, from 1997 to the date of his placement on compulsory leave, he received discipline ranging from counseling to a one-day suspension for inappropriate conduct, poor judgment and deviation from procedures. The Department directed Employee to attend classes on communications, self-discipline and emotional control, and sexual harassment. The Department had received indications that some employees felt uncomfortable working with Employee. He was directed to undergo a Fitness for Duty Evaluation that rendered him unfit for three essential job functions of a patrol deputy. Employee was placed on Compulsory Leave and was not afforded a hearing prior to the Department's final determination to place him on leave. He sought entitlement to reinstatement until he could be provided pre-disciplinary rights, or in the alternative, back pay from the date of his leave to the date of the Commission decision. The hearing officer concluded that Employee's placement on compulsory leave was appropriate. However, it was determined that the Department had erred in failing to provide him with a pre-determination hearing. It is therefore recommended that the placement of Employee on Compulsory Leave be affirmed; that the Civil Service Commission determine that the Department erred in failing to provide Employee with a pre-determination hearing; that Employee be awarded leave time and compensatory time restoration and back pay with interest and benefits from April 24, 2000 to July 19, 2000; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission and the Commission approve and file this report.

**Motion by Austin to approve findings and recommendations;
seconded by Dixon. Carried.**

DISCRIMINATION

Complaints

9. **Damon Colclough**, Protective Services Worker II, Health and Human Services Agency, alleging gender and race discrimination by the Health and Human Services Agency.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to hold in abeyance pending outcome of an investigation by the Equal Employment Opportunity Commission and then conduct an investigation and report back.

Staff recommendation approved.

Findings

10. Fred Fox, S.E.I.U. Local 2028, on behalf of **Eric Enell**, Code Enforcement Officer II, Department of Planning and Land Use, alleging gender and age discrimination by the Department of Planning and Land Use. (See also No 12 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 7, 2000, the Commission appointed Barry I. Newman to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations of discrimination, and probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Newman to approve Findings and Recommendations;
seconded by Dixon. Carried.**

11. Fred Fox, S.E.I.U. Local 2028, on behalf of **Mark Lewis**, Waste Management Coordinator, Department of Environmental Health, alleging gender and age discrimination by the Department of Planning and Land Use. (See also No 13 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 7, 2000, the Commission appointed Barry I. Newman to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations of discrimination, and probable cause that a violation of discrimination laws occurred was not established. It is therefore

recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Newman to approve Findings and Recommendations;
seconded by Dixon. Carried.**

SELECTION PROCESS

Complaints

12. Fred Fox, S.E.I.U. Local 2028, on behalf of **Eric Enell**, Code Enforcement Officer II, Department of Planning and Land Use, appealing his non-selection as a Code Enforcement Coordinator by the Department of Planning and Land Use. (See also No. 10 above.)

RECOMMENDATION: Hold in abeyance pending input from the Department of Planning and Land Use.

Staff recommendation approved.

13. Fred Fox, S.E.I.U. Local 2028, on behalf of **Mark Lewis**, Waste Management Coordinator, Department of Environmental Health, appealing his non-selection as a Code Enforcement Coordinator by the Department of Planning and Land Use. (See also No. 11 above.)

RECOMMENDATION: Hold in abeyance pending input from the Department of Planning and Land Use.

Staff recommendation approved.

Findings

14. **Stacey Lizarraga**, appeal of removal of his name by the Department of Human Resources from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item No 14. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No 14 ratified.

INVESTIGATIONS

15. **Tonie Hyde**, former Housing Program Review Coordinator, Department of Housing and Community Development, requesting a review of the classification of Housing Program Analyst.

RECOMMENDATION: Assign a Commissioner to investigate under Rule XI.

Staff recommendation approved. Commissioner Newman assigned.

OTHER MATTERS

Extension of Temporary Appointments

16. Health and Human Services Agency

- A. 1 Social Services Administrator III (Leslie E. Henderson)
- B. 1 Residential Care Worker Trainee (Gabriele Bivens)
- C. 1 Personnel Manager (Lynette Mercado)
- D. 1 Administrative Services Manager I (Bruce Walker)

Auditor and Controller

- E. 1 Senior Accountant (Alan Kitabayashi)

Department of Human Resources

- F. 2 Human Resources Analyst Trainees (Ma Elenita Abille, Demetrio Corpuz)

17. Department of Probation

- A. 4 Probation Aides (Kerry Safford, Kathleen Buchan, Consuelo Alicbusan, Joy Trunzo)

18. Office of the District Attorney

- A. 1 Telephone Systems Specialist (Linda Hughes)
- B. 1 Criminal Legal Secretary II (Juanita Groves)

19. Agriculture Weights and Measures

- A. 7 Insect Detection Specialists (Jose Gonzalez, Bradley Shipley, Jesus Calleros, Lawrence Randall, Lauren Moreno, Jorge Fregoso, Adrienne Moss)

RECOMMENDATION: Ratify Item Nos. 16-19.

Item Nos. 16-19 ratified.

Ratification of Medical Provider

20. Ratification of **Paul J. Pockros, M.D.** as an additional name to the list of medical providers to be used for fitness for duty evaluations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify Provider.

Item No. 20 ratified.

20a. Off Docket Item. The matter of adjustment of compensation for the Commission's Executive Officer to the current Control Point based on the Board of Supervisor's recent amendments to the Compensation Ordinance.

RECOMMENDATION: This item is an off-docket item as the Commission became aware of this matter after distribution of the current Agenda. It is necessary to take immediate action and adjust the Executive Officer's salary to the Control Point.

Recommendation approved as presented by Vice President Mary Gwen Brummitt on behalf of President Sigrid Pate.

21. Public Input.

ADJOURNMENT: 3:30 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE SEPTEMBER 6, 2000.